

MOBILEHOME PARK STAY-IN BUSINESS ORDINANCE FRAMEWORK

Revised: February 5, 2016

PURPOSES:

1. To protect and preserve Mobilehome Parks as a source of affordable housing.
2. To protect Mobilehome Parks from conversion to other uses for a fixed period of time.
3. To recognize that owners of Mobilehome Parks have the right to go out of business.
4. To encourage owners of Mobilehome Parks to remain in business.
5. To provide owners of Mobilehome Parks with the incentives to make capital improvement investments in their Mobilehome Parks.
6. To provide a mechanism to assist residents who have insufficient resources to pay the cost of capital improvement pass-throughs.

DEFINITIONS:

The definitions for the following identified items as used in the proposed Ordinance shall have the same meanings as provided in the Mobilehome Rent Ordinance commencing at Chapter 17.22.050 of the San Jose Municipal Code:

Affected rental unit, Anniversary Date, Base Rent, Dealer Pullout, Landlord, Mobilehome, Mobilehome lot, Mobilehome owner, Mobilehome park, Mobilehome resident, Owner, Party, Rent, Rental Agreement, and Rental unit. (For purposes of simplicity and convenience we are using the terms "park owner" to mean either the owner or operator of the Mobilehome Park, and "resident" to mean the persons holding a rental agreements covering both the home and the lot upon which it sits.)

The definitions of the following shall have the meanings below in the proposed Ordinance;

Capital Improvement(s) are those improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses, and which are required to be amortized over the useful life of the improvement pursuant to allowed depreciation provisions of the Internal Revenue Code, and issued pursuant thereto or as to comply with all applicable local code requirements imposed by the City affecting health and safety and improvements undertaken (this is essentially the definition out of the 1979 Rent Control Ordinance, Section 5702.2).

Rent increase shall mean any rent demanded or paid by a Mobilehome owner in excess of rent paid for the Rental unit of space immediately prior to such demand or payment.

Stay-In Business means that the Owner has agreed for a fixed term of the sooner to occur of either: (i) December 31, 2036 or (ii) 20 years from its Opt-In to remain in business and has agreed contractually to 1) not process a change in use of a Mobilehome park under Part 4 of Chapter 20.180 of San Jose Municipal Code and 2) not process a closure under State Law.

Opt-In refers to the fact that a park owner has agreed to Stay-In Business. An Owner may Opt-In at anytime at its sole option.

Capital Improvement pass-through(s) shall mean and include Capital Improvement(s) that have been approved consistent with the provisions of the Ordinance.

Fair Return on Capital Improvement Investment, which is a new investment in the park, shall be allowed, and shall be at the then prime rate as determined by the San Francisco Federal Reserve plus 2% at the time the work on the improvement commenced.

In-Place Transfer means the sale of a home by an existing Mobilehome owner to a Park Qualified Applicant.

In-Place Transfer Fee means the amount the Base Rent may increase as a result of an In-Place Transfer. The In-Place Transfer Fee shall be limited as follows:

- An amount equal to the ten percent (10%) of the then current monthly Base rent amount, not to exceed One Hundred Dollars (\$100.00) per month in the year that the Mobilehome park qualifies (as defined below in #2) for an In-Place Transfer Fee, with the \$100.00 per month cap indexed to inflation from adoption of the Ordinance.

The limits stated above shall not apply in the following cases;(1) The Mobile home owner has voluntary removed it or caused it to be removed from the space and has terminated his or her tenancy in the park; (2) Owner has terminated Mobilehomes Owner's tenancy pursuant to one or more of the stated reasons contained in California Civil Code Section 798.56; (3) The Mobilehome subject to an In-Place Transfer has been foreclosed upon by a financial institution or private lender; and (4) a Dealer pullout. There is a no limit on the amount Owner may increase Base Rent in these cases.

2. *In-Place Transfer Fee "Qualification":* It is the intent of the Ordinance to encourage owners of Mobilehome parks to invest in their communities with new Capital Improvements that benefit their residents and improve Mobilehome parks.

It is also the purpose to preserve and protect Mobilehome parks for a long period of time, all intended to balance the interests and desires of Mobilehome park residents and owners of Mobile home parks. An Owner may achieve the In-Place Transfer Fee in the event it has demonstrated a cumulative investment of at least Five Hundred Dollars (\$500.00) in Capital Improvements per Mobilehome Park space multiplied by the total number of spaces in the Mobilehome Park (If the \$500 qualification has not been met within the first year after the Ordinance has been enacted, then the \$500 cumulative qualification shall adjust annually for inflation thereafter until met).

In the event that a Mobilehome Park owner invests less than the qualification amount, the Mobilehome Park owner would then not be entitled to any In-Place Transfer Fee until it has spent the qualification amount.

Provisions:

In consideration of an Owner agreeing to Opt-In to the provisions of the Ordinance; the City agrees that an Owner or Operator shall have:

1. The right to increase Base rent defined in Chapter 17.22.080 and 17.22.450; and
2. The right to pass-through Capital Improvements; and
3. The right to increase Base rent by imposition of an In-Place Transfer Fee when in compliance with the ordinance.

The right to receive a pass-through for Capital Improvements is not subject to economic qualifications as applied in the “In-Place Transfer” section. Rather the right to receive Capital Improvement pass-throughs is subject to;

An administrative review procedure undertaken by a City official qualified to evaluate the cost of Capital Improvements and has experience in all aspects of construction including contracts, change orders and bidding. Such official shall use IRS amortization schedules in order to determine the proper period of time to set for recovery of the costs of the improvements. This official shall be appointed by the City Manager’s Office. The official shall professionally evaluate and be charged with making determinations based on an Owners Submittal For Reimbursement of Capital Improvements (“Owner’s Submittal”). Any Owner’s Submittal, the standards applied to them, and the decision of the City official in charge of the process shall be made available on the City’s website. In the event that an individual Capital Improvement costs in excess of the lesser of either (i) \$1,000 per Mobilehome park space multiplied by all of the spaces within the Mobilehome park; or (ii) \$50,000, then the Owner’s Submittal shall include third party estimates of at least 2 bids from State licensed contractors with at least 10 years’ experience in the construction of such Capital Improvements. This will give concerned Residents and other parties the opportunity to provide written input to the city official. Such input shall, however, be directly related to the standards for approval or denial, not simply to voice opposition to the intended Capital Improvement. The Owner Submittal shall be reviewed by the City official and all residents for 30 days. The City official shall submit all questions and comments regarding the Owner Submittal to the Owner within the 30 day review period.

The standards shall include:

- A. Capital Improvements eligible for a cost pass-through must primarily benefit the residents.
- B. The amortization period shall conform to IRS amortization schedules. In cases where the improvement is not specifically listed, then the IRS schedules shall be used for guidance as to appropriate amortization period for the reimbursement of the Capital Improvement cost.
- C. Each approved Capital Improvement shall include a Fair Return on a Capital Improvement

Investment.

D. All approved Capital Improvement pass-throughs shall appear on the monthly billing for each space as a separate line item from Base rent. Annual increases in Base rent do not apply to pass-throughs. A pass-through shall be dropped from the pass-through total when the payoff period has ended, and new pass-through's shall be added to the total when they are approved.

E. A capital improvement pass-through attaches to the Mobilehome lot. Therefore any purchaser of the home becomes responsible for paying the pass-through(s).

F. Upon filing of the Owner's Submittal, each Mobilehome resident in the Mobilehome Park shall be mailed a copy of the Owner's Submittal for a Capital Improvement costing in excess of \$50,000.00. The Owner's Submittal and all supporting documentation shall be made available for review at the Park offices and on the City's Website.

G. All Capital Improvement pass-throughs, in aggregate, shall not exceed Fifty Dollars (\$50.00) per space per month, indexed to inflation, at any time during the term of the Ordinance.

The Ordinance shall also include the following provisions:

1. ***A Capital Improvement Assistance Program:*** In order to address those limited cases where very low income residents cannot afford either all or a portion of the pass-throughs; the Park Owners have identified an independent assistance program through which they will cover such Capital Improvement pass-throughs for those residents who qualify for such assistance.

2. ***Ordinance Administrative Costs:*** All administrative costs incurred by the City of San Jose in its execution of the Ordinance shall be borne by owners of mobilehome parks that Opt-In to the Ordinance. Costs shall be recovered by the City on or before March 31 of each calendar year after a full and complete accounting of same is provided to each participating mobilehome park owner for the immediately preceding calendar year. Administrative costs shall be allocated based upon number of spaces.

3. ***Notification to Purchaser of Mobilehome:*** Consistent with State law, the Landlord shall provide a purchaser who has been approved for tenancy in the Mobilehome Park (the "Qualified Applicant") with a statement showing the Base rent the Qualified Applicant will be paying. The Owner shall also provide the Qualified Applicant with information as to the total amount of approved amortized capital improvements the Qualified Applicant will be obliged to pay as a separate line item on the monthly bill. If the Qualified Applicant so requests in writing, the Qualified Applicant may receive a list of the authorized Capital Improvement pass-through(s) included in the total and their ending dates. The Mobilehome owner and his agent must be provided with the monthly Base rent and pass-through total and shall have the right to file a complaint with the Housing Department if the Qualified Applicant believes the In-Place Transfer Fee is in excess of the amount allowed under the Ordinance.